



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

August 31, 1998

Mr. William T. Buida  
Assistant General Counsel  
Texas Department of Human Services  
P.O. Box 149030  
Austin, Texas 78714-9030

OR98-2070

Dear Mr. Buida:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 117624.

The Department of Human Services (the "department") received a request from an employee for the merit raises for certain department employees. You assert that the requested reports are excepted from required public disclosure based on section 552.103 of the Government Code. We note that Open Records Letter Ruling No. 98-1343 (1998) references the same Equal Employment Opportunity Commission complaint which you maintain is still ongoing in this instance.

Section 552.103(a) of the Government Code reads as follows:

(a) Information is excepted from [required public disclosure] if it is information:

- (1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and
- (2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

To secure the protection of section 552.103(a), a governmental body must demonstrate that requested information "relates" to a pending or reasonably anticipated judicial or

quasi-judicial proceeding. Open Records Decision No. 588 (1991). A governmental body has the burden of providing relevant facts and documents to show the applicability of an exception in a particular situation. The test for establishing that section 552.103 applies is a two-prong showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.). You made the requisite showing that the requested information relates to reasonably anticipated litigation for purposes of section 552.103(a) as addressed in Open Records Letter Ruling No. 98-1343. See Open Records Decision No. 386 (1983) (pendency of complaint before the Equal Employment Opportunity Commission demonstrates reasonably anticipated litigation). The department may withhold the requested records from the requestor.<sup>1</sup>

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



Janet I. Monteros  
Assistant Attorney General  
Open Records Division

JIM/nc

Ref.: ID# 117624

Enclosures: Submitted documents

cc: Ms. Patsy Watson  
833 Piedmont Drive  
Abilene, Texas 79601  
(w/o enclosures)

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<sup>1</sup>If the opposing party in the litigation has seen or had access to any of the information in these records, there would be no justification for now withholding that information from the requestor pursuant to section 552.103(a). Open Records Decision Nos. 349 (1982), 320 (1982). In addition, the applicability of section 552.103(a) ends once the litigation is concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).